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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 120705210-4423-03]

RIN 0648-XC101

Endangered and Threatened Wildlife and Plants; Final Rule to List Five Species of Sturgeons as Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list five species of foreign sturgeon as endangered under the Endangered Species Act (ESA). We updated the status reviews of the species to include additional information regarding the species and conservation efforts being made to protect them. We considered governmental and public comments on the proposed listing rule. We have made our determination that Acipenser naccarii (Adriatic sturgeon), and A. sturio (European sturgeon) in Western Europe, A. sinensis (Chinese sturgeon) in the Yangtze River basin, and A. mikadoi (Sakhalin sturgeon) and Huso dauricus (Kaluga sturgeon) in the Amur River Basin/Sea of Japan/Sea of Okhotsk region, should be listed as endangered species. We will not designate critical habitat because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas in the U.S. that are currently essential to the conservation of any of these species.

DATES: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

FOR FURTHER INFORMATION CONTACT: Dr. Dwayne Meadows, NMFS, Office of Protected Resources, (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2012, we received a petition from the WildEarth Guardians and Friends of Animals to list 15 species of sturgeon (Acipenser naccarii – Adriatic sturgeon; A. sturio – European sturgeon; A. gueldenstaedtii – Russian sturgeon; A. nudipectus – ship sturgeon/bastard sturgeon/fringebarbel sturgeon/spiny sturgeon/thorn sturgeon; A. persicus – Persian sturgeon; A. stellatus – stellate sturgeon/star sturgeon; A. baerii – Siberian sturgeon; A. dabryanus – Yangtze sturgeon/Dabry's sturgeon/river sturgeon; A. sinensis – Chinese sturgeon; A. mikadoi – Sakhalin sturgeon; A. schrenckii – Amur sturgeon; Huso dauricus – Kaluga sturgeon; Pseudoscaphirhynchus fedtschenkoi – Syr-darya shovelnose sturgeon/Syr darya sturgeon; P. hermanni – dwarf sturgeon/Little Amu-darya shovelnose/little shovelnose sturgeon/Small Amu-dar shovelnose sturgeon; P. kaufmanni – false shovelnose sturgeon/Amu darya shovelnose sturgeon/Amu darya sturgeon/big Amu darya shovelnose/large Amu-dar shovelnose sturgeon/shovelfish) as threatened or endangered under the Endangered Species Act (ESA). As a result of subsequent discussions between us and the U.S. Fish and Wildlife Service (FWS), we determined that 10 of the 15 petitioned sturgeon species are not marine or anadromous.

Therefore FWS is conducting the required listing analyses for those 10 species and NMFS is making the determinations for the five anadromous species, Acipenser naccarii, A. sturio, A. sinensis, A. mikadoi and Huso dauricus. On August 27, 2012, we published a 90-day finding in the Federal Register (77 FR 51767) that found that listing these five species under the ESA may be warranted, and announced the initiation of status reviews for each species. Based on information we gathered during the status review, we proposed listing all five species as endangered on October 31, 2013 (78 FR 65249).

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 et seq.). To make this determination, we first consider whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” Section 3 of the ESA further defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). Section 4(a)(1) of the ESA requires us to determine whether any species is

endangered or threatened due to any one or a combination of the following five threat factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. We are required to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

In making listing determinations for these five species, we first determined whether each petitioned species meets the ESA definition of a "species." Next, using the best available information gathered during the status reviews, we completed an extinction risk assessment. We then assessed the threats affecting the status of each species using the five listing factors identified in section 4(a)(1) of the ESA.

Once we determined the threats, we assessed efforts being made to protect the species to determine if these conservation efforts are adequate to mitigate the existing threats. We evaluate conservation efforts using the criteria outlined in the joint NMFS/FWS Policy for Evaluating Conservation Efforts (PECE) (68 FR 15100; March 28, 2003) to determine their certainty of implementation and effectiveness for future or not yet fully implemented conservation efforts. Finally, we re-assessed the extinction risk of each species in light of the existing conservation efforts.

Public Comment

We note that at least one commenter provided information about the status review as well

as proposed listing. Where that information was relevant to the proposed listing, we considered it and discussed it in this final rule. If it was relevant to the status review alone, we addressed that by preparing an updated status review.

In the solicitation for information from the public on the proposed rule we received information and/or comments from five parties. We also received comments from seven foreign countries as part of our foreign consultation solicitation; none took a position on whether the species should be listed. A scientific reviewer provided a citation to recent work on genetic diversity of paleontological specimens of European sturgeon and unpublished recent sightings of juvenile European sturgeon in nearshore waters near the mouth of the Gironde River in France. We incorporated that information in the updated status review and considered it in our final listing determination.

Stocking

Two commenters provided views on the role of stocking and releasing animals cultured in captivity to assist in conservation efforts. The World Sturgeon Conservation Society (WSCS) argued that listing may adversely impact stocking, which they argue provides conservation benefits by increasing population size of endangered species. The petitioner argued and provided literature references that stocking programs may create unsustainable demand for founder stocks from the wild that ultimately hurt conservation efforts. None of the literature provided addressed sturgeon stocking programs. While we agree that stocking fish into the wild can be an effective conservation strategy when risks such as genetic integrity and diversity, disease, and effects on source populations are considered, we received no additional specific information on the threats or benefits of stocking to any of the proposed species that would alter

our status assessments, and make no changes in the listing determination.

International Trade

Two commenters provided information on the effect of commercial trade in the proposed species on their conservation. The WSCS suggested commercial use of these species could help fund conservation efforts to improve the status of these species. WSCS argued that an endangered listing would harm caviar trade. They asserted that caviar trade from aquacultured sources reduces pressure on wild sources and reduces prices for wild-sourced product. In contrast, the petitioner provided comments and references arguing that legal commercial trade would hurt the conservation status of these species by providing cover for illegal trade, by confusing consumers “by sending a signal that these species are no longer endangered, or it may reduce the stigma” associated with these species, and/or by increasing demand for wild animals. We believe the effect of trade on conservation of endangered species is a complex issue, as the few studies on other species provide conflicting results. We are not aware of any studies documenting whether trade in sturgeon furthers conservation efforts. Neither commenter, nor any other commenter, provided any new data on trade in any of the proposed species that we had not already considered. In addition, the commenter provided no information regarding conservation efforts that we could evaluate under PECE. We note that we are required to make ESA listing decisions based on the best available scientific and commercial data. While under PECE we consider whether other types of conservation approaches or actions render ESA listing unnecessary, once we have determined to list a species based on consideration of the statutory criteria we consider other conservation actions in later actions, such as during the recovery planning process. We make no change in the listing determination as a result of these comments.

Other Comments

The WSCS expressed concern that a regulatory ESA listing would be ineffective as the United States has little jurisdiction or ability to effect conservation in the range states of the proposed species and would be better able to assist conservation efforts voluntarily and that listing was inappropriate. We agree that the United States has limited jurisdiction in the range states of the proposed species, but note that the ability of the United States to take action subsequent to listing is not one of the statutory criteria for listing. As noted above, the ESA only allows us to consider the best available scientific and commercial information in making listing decisions. Nevertheless, we intend to engage in voluntary efforts to assist range states in the conservation of these species.

The Florida Sturgeon Production Working Group, an aquaculture advisory body to the state of Florida, noted that Florida sturgeon farmers are currently growing Atlantic sturgeon (Acipenser oxyrhynchus oxyrhynchus), which are closely related to the proposed European sturgeon (A. sturio). They are concerned that there might be future taxonomic changes affecting the definition and taxonomy of these two species. They requested we provide “a means to distinguish” the two species in the final rule. We appreciate the concerns of the working group. However, it is not possible for us to anticipate potential taxonomic changes at this time. We note that U.S. DPSs of Atlantic sturgeon are currently listed under the ESA as either endangered or threatened. Should new scientific agreement changing the taxonomy of either of these species occur, we would likely need to clarify or modify our sturgeon listings based on the best available scientific information at that time. In order to do so, we would need to comply with applicable procedural requirements of the Endangered Species Act.

The petitioner also provided comments relative to the legal status and trade of animals in captivity prior to listing. We agree there was some confusing language in the proposed rule regarding actions that would not be considered prohibited take under section 9 with regard to commercial trade where we also discussed other ESA authorities. Section 9(b)(1) of the ESA says that captive specimens of listed species that were in captivity at the time of listing are not subject to the requirements of Section 9(a)(1)(A) or 9(a)(1)(G) of the Act (that prohibit import/export and require adherence to any additional protective regulations promulgated for the species) provided that such holding and any subsequent holding or use of the captive fish is not in the course of commercial activity. So that this is clear, in this final rule we did not include the sentence, “Any interstate and foreign commerce trade of sturgeon already in captivity.” in the section identifying activities that are not likely to result in a violation of section 9.

Status Reviews

In order prepare the status reviews, we compiled information on the species biology, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with known experts. We updated the status reviews based on information submitted by peer reviewers, foreign governments, and the public. This information is available in the updated status review report (Meadows and Coll, 2014) available on our website (<http://www.nmfs.noaa.gov/pr>).

Sturgeon General Species Description

Sturgeons are bony fishes most closely related to paddlefishes and bichirs. They all have cartilaginous skeletons, heterocercal caudal fins (upper lobe is larger than the lower lobe), one spiracle respiratory opening (like sharks), and unique ganoid scales. In sturgeons, these ganoid

scales remain only as the five rows of bony “scutes” on the sides of the body. They all have a bottom-oriented mouth with four barbels (sensory “whiskers”), a flat snout and strong rounded body. Sturgeons have an electrosensory system similar to that in sharks, which they use for feeding. All of these species seasonally migrate into rivers to spawn. They are mostly bottom-oriented feeders that are normally generalist predators on benthic prey, including various invertebrates and fishes, except H. dauricus, which is more piscivorous. The proposed rule (78 FR 65249, October 31, 2013) summarizes general background information on the five species’ natural history, range, reproduction, population structure, distribution and abundance; none of which has changed since the proposed rule. All of that information is incorporated herein by reference.

Species Determinations

Based on the best available scientific and commercial information described above and in the updated status review report (Meadows and Coll, 2014), we have determined that Acipenser naccarii, A. sturio, A. sinensis, A. mikadoi and Huso dauricus are taxonomically-distinct species and therefore meet the definition of “species” pursuant to section 3 of the ESA and are eligible for listing under the ESA.

Extinction Risk

None of the information we received from peer reviewers and public comment affected the status of any of the five sturgeons, so our extinction risk evaluation remains the same as in the original status review report (Meadows and Coll, 2013) and proposed rule (78 FR 65249, October 31, 2013). The extinction risk analysis team found all five species to be at high risk of extinction in the present, with median votes for each team member at or above 80 percent

probability of being currently in danger of extinction for each species. After reviewing the best available scientific data and the extinction risk evaluation on the five species of sturgeon, we continue to concur with the findings of the extinction risk analysis team and conclude that the risk of extinction for all five species of sturgeon is currently high.

Summary of Factors Affecting the Five Species of Sturgeon

Next we consider whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA are contributing to the extinction risk of these five sturgeons. Since the proposed rule was published, we have received no new information relevant to four of the section 4(a)(1) factors: of destruction or modification of habitat, overutilization, disease or other factor through the public comment process or our own research for any of the five species. We incorporate the discussion of these four factors from the proposed rule (78 FR 65249, October 31, 2013) by reference herein.

We did receive additional information regarding foreign regulatory measures related to A. naccarii and A. sturio from Bosnia and Herzegovina, Greece, and the United Kingdom. Acipenser naccarii is listed in Bosnia and Herzegovina as endangered under the Law on Nature protection which is a “red list” of species. In Greece it is protected under Presidential Decree 67/1981 and Joint Ministerial Decision No. 33318/3028/11-12-1998 (B’ 1289). The current range of this species does not include these countries and the protections have not prevented its decline, so this additional information does not affect our conclusion in the proposed rule regarding the adequacy of regulatory measures for this species.

The same protective laws in Bosnia and Herzegovina and Greece also apply to A. sturio. In addition, the United Kingdom provided information on its regulatory measures. They have

implemented the European Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora into national law under the Conservation of Habitats and Species Regulation (2010). The species is also protected in the United Kingdom under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) as well as being listed separately under two pieces of legislation at a country level. In England it is listed under the Natural Environment and Rural Communities Act (2006) (section 41) as a species “of principal importance for the purpose of conserving biodiversity”, whilst in Scotland it is listed under the Scottish Biodiversity List (2005), which is a list of flora, fauna and habitats considered to be of principal importance for biodiversity conservation. The current range of this species does not include Bosnia and Herzegovina and Greece, and the species is only irregularly and anecdotally seen in the United Kingdom (Sheena Hynd, personal communication) and the protections have not prevented its decline, so this additional information does not affect our conclusion in the proposed rule regarding the adequacy of regulatory measures for this species.

Overall Risk Summary

After considering the status, threats and extinction risks for each of the five species of sturgeon, we have determined that Acipenser naccarii, A. sturio, A. sinensis, A. mikadoi and Huso dauricus are in danger of extinction throughout all of their ranges, largely due to 1) present or threatened destruction, modification or curtailment of habitat, 2) overutilization for commercial, recreational, scientific, or educational purposes, and 3) inadequacy of existing regulatory mechanisms.

Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing

determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species. In judging the efficacy of not yet implemented efforts, or those existing protective efforts that are not yet fully effective, we rely on the Services' joint "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE"; 68 FR 15100; March 28, 2003). The PECE policy is designed to ensure consistent and adequate evaluation of whether any conservation efforts that have been recently adopted or implemented, but not yet proven to be successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming the basis for listing a species as threatened rather than endangered. The PECE policy is expected to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

The PECE policy establishes two basic criteria to use in evaluating efforts identified in conservations plans, conservation agreements, management plans or similar documents: 1) the certainty that the conservation efforts will be implemented; and 2) the certainty that the efforts will be effective. We evaluated conservation efforts we are aware of to protect and recover the five sturgeon species that are either underway but not yet fully implemented, or are only planned. We sought additional information on other conservation efforts in our public comment process at the proposed rule stage, but received no information on additional projects. See the proposed rule (78 FR 65249, October 31, 2013) to review the conservation efforts we are aware of and considered in this listing determination. We note here our response above to the contrasting public comments either supporting or highlighting the risks of stocking efforts. We have no evidence that specific stocking efforts are harming the five sturgeon species, or conversely, that

they met the PECE policy criteria of certainty of implementation or effectiveness to be considered a factor to mitigate extinction risk. Therefore, we conclude that the identified conservation efforts do not alter the extinction risk assessments for any of the five sturgeon species.

Final Determination

Section 4(b)(1) of the ESA requires that we make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have reviewed the best available scientific and commercial information, including the petition, the information in the report of the review of the status of the five species of sturgeon, public comment, and the comments of peer reviewers. We are responsible for determining whether Acipenser naccarii (Adriatic sturgeon), A. sturio (European sturgeon), A. sinensis (Chinese sturgeon), A. mikadoi (Sakhalin sturgeon) and Huso dauricus (Kaluga sturgeon) are threatened or endangered under the ESA (16 U.S.C. 1531 et seq.). Accordingly, we have followed a stepwise approach as outlined above in making this listing determination for these five species of sturgeon. We have determined that Acipenser naccarii (Adriatic sturgeon), A. sturio (European sturgeon), A. sinensis (Chinese sturgeon), A. mikadoi (Sakhalin sturgeon) and Huso dauricus (Kaluga sturgeon) constitute species as defined by the ESA.

Based on the information presented, we find that all five species of sturgeon are in danger of extinction throughout all of their ranges. We assessed the ESA section 4(a)(1) factors and conclude the Adriatic, European, Chinese, Sakhalin and Kaluga sturgeon all face ongoing threats

from habitat alteration, overutilization for commercial and recreational purposes, and the inadequacy of existing regulatory mechanisms throughout their ranges. Acipenser sturio also face high risks from its life history and published predictions of the effects of climate change (Lassalle et al., 2011). All of the threats attributed to the species' decline are ongoing except the largely historical threat from directed fisheries. After considering efforts being made to protect these sturgeon, we could not conclude that the proposed conservation efforts would alter the extinction risk for any of these five species. Therefore, we are listing each of these five species as endangered.

Effects of Listing

Conservation measures provided for species listed as endangered under the ESA include recovery actions (16 U.S.C. 1533(f)), concurrent designation of critical habitat if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); Federal agency requirements to consult with NMFS under Section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals. The main effects of this proposed listing are prohibitions on take, including export and import.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely

modify critical habitat. It is possible that the listing of the five species of sturgeon under the ESA may create a minor increase in the number of section 7 consultations, though consultations are likely to be rare given that these species mostly occur in foreign territorial waters.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR §424.12(h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by Acipenser naccarii, A. sturio, A. sinensis, A. mikadoi and Huso dauricus as being entirely outside U.S. jurisdiction, so we cannot designate critical habitat for these species. We can designate critical habitat in unoccupied areas in the United States if the area(s) are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR §424.12(e) specify that we shall designate as critical habitat areas outside

the geographical range presently occupied by the species only when the designation limited to its present range would be inadequate to ensure the conservation of the species.

The best available scientific and commercial information on these species does not indicate that U.S. waters provide any specific essential biological function for any of them. Based on the best available information, we have not identified unoccupied area(s) that are currently essential to the conservation of any of the sturgeons proposed for listing. Therefore, based on the available information, we do not intend to designate critical habitat for Acipenser naccarii, A. sturio, A. sinensis, A. mikadoi or Huso dauricus.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. Because we are listing all five sturgeons as endangered, all of the prohibitions of Section 9(a)(1) of the ESA will apply to all five species. These include prohibitions against the import, export, use in foreign commerce, or “take” of the species. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species’ range. Activities that we believe could result in a violation of section 9 prohibitions of these five sturgeons include, but are not limited to, the following:

- (1) Take within the United States or its territorial sea, or upon the high seas;

- (2) Possessing, delivering, transporting, or shipping any sturgeon part;
- (3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any sturgeon or sturgeon part, in the course of a commercial activity;
- (4) Selling or offering for sale in interstate commerce any part, except antique articles at least 100 years old;
- (5) Importing or exporting sturgeon or any sturgeon part to or from any country;
- (6) Releasing captive sturgeon into the wild. Although sturgeon held non-commercially in captivity at the time of listing are exempt from certain prohibitions, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly, the prohibition against injuring or killing. Release of a captive animal has the potential to injure or kill the animal. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations of native sturgeon through introduction of diseases or inappropriate genetic mixing;
- (7) Harming captive sturgeon by, among other things, injuring or killing a captive sturgeon, through experimental or potentially injurious veterinary care or conducting research or breeding activities on captive sturgeon, outside the bounds of normal animal husbandry practices. Captive breeding of sturgeon is considered experimental and potentially injurious. Furthermore, the production of sturgeon progeny has conservation implications (both positive and negative) for wild populations. Experimental or potentially injurious veterinary procedures and research or breeding activities of sturgeon may, depending on the circumstances, be authorized under an ESA 10(a)(1)(A) permit for scientific research or the enhancement of the propagation or survival of the species.

Although not binding, we consider the following actions, depending on the circumstances, as not being prohibited by ESA Section 9:

(1) Take of a sturgeon authorized by an ESA section 10(a)(1)(A) permit authorized by, and carried out in accordance with the terms and conditions of an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;

(2) Continued possession of sturgeon parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (i.e., held in a controlled environment at the time of listing, in a non-commercial activity);

(3) Continued possession of live sturgeon that were in captivity or in a controlled environment (e.g., in aquaria) at the time of this listing, so long as the prohibitions under ESA section 9(a)(1) are not violated. Facilities must provide evidence that the sturgeon were in captivity or in a controlled environment prior to listing. We suggest such facilities submit information to us on the sturgeon in their possession (e.g., size, age, description of animals, and the source and date of acquisition) to establish their claim of possession (see For Further Information Contact); and

(4) Provision of care for live sturgeon that were in captivity at the time of listing. These individuals are still protected under the ESA and may not be killed or injured, or otherwise harmed, and, therefore, must receive proper care. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and we do not consider such activities to

constitute take or harassment of the animals so long as adequate care, including veterinary care, such as confining, tranquilizing, or anesthetizing sturgeon when such practices, procedures, or provisions are not likely to result in injury, is provided.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from qualified specialists, concurrent with the public comment period. The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. We solicited peer review comments on the status review report and the scientific or commercial data or assumptions related to the information considered for listing from 12 outside scientists and two NMFS scientists familiar with sturgeons. After publication of the proposed rule and status report, we received additional comments from one scientist. We incorporated these additional comments into the updated status review report and this final rule. We conclude that these experts' reviews satisfy the requirements for "adequate [prior] peer review" contained in the Bulletin (sec. II.2.) as well as the joint policy.

References

A complete list of the references used in this final rule is available upon request (see ADDRESSES).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216-6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: May 23, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C 1361 et seq.

2. In § 224.101, paragraph (h), add new entries for five species under the “Fishes” section in alphabetical order as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of Listed Entity			

<u>Fishes</u>					

Sturgeon, Adriatic	<u>Acipenser naccarii</u>	Entire species	[Insert FEDERAL REGISTER page number where the document begins],[insert date of publication]	NA	NA

Sturgeon, Chinese	<u>Acipenser sinensis</u>	Entire species	[Insert FEDERAL REGISTER page number where the document begins],[insert date of publication]	NA	NA
Sturgeon, European	<u>Acipenser sturio</u>	Entire species	[Insert FEDERAL REGISTER page number where the document begins],[insert date of publication]	NA	NA
Sturgeon, Kaluga	<u>Huso dauricus</u>	Entire species	[Insert FEDERAL REGISTER page number where the document begins],[insert date of publication]	NA	NA
Sturgeon, Sakhalin	<u>Acipenser mikadoi</u>	Entire species	[Insert FEDERAL REGISTER page number where the document begins],[insert date of publication]	NA	NA

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
